

# Comments from

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on

"Reform of the U.S. Copyright Office" to the

United States House of Representative Judiciary Committee

Let me begin by applauding Chairman Goodlatte and Ranking Member Conyers for recognizing the importance and imminence of addressing the issues associated with the United States Copyright Office. The restructuring of the Office has been necessary for quite some time now; its functions are very unlike those of the Library of Congress and the Copyright Office has a need to evolve in the 21<sup>st</sup> century as a separate entity. Consideration that restructuring was necessary has become even more apparent in recent months as the Copyright Office awaits the naming of its next permanent Register and the creators, consumers and content-related businesses await as one person determines who that will be. As you consider changes to Copyright Law affecting the Copyright Office, the Nashville Songwriters Association International (NSAI) appreciates the opportunity to weigh in on a number of related issues.

# THE REGISTER OF COPYRIGHTS AND COPYRIGHT OFFICE STRUCTURE

NSAI wholly agrees that the Copyright Office should remain part of the Legislative Branch of government and have autonomy over its budget and technology needs. It should be independent from the Library of Congress. The two agencies perform vastly different functions and have vastly different priorities in terms of allocating budget resources and technology. The mission of the U.S. Copyright Office is "to administer the Nation's copyright laws for the advancement of the public good; to offer services and support to authors and users of creative works; and to provide expert impartial assistance to Congress, the courts, and executive branch agencies on questions of copyright law and policy." Carla Hayden, the current Librarian of Congress sums up the Library of Congress' functions as such: "The Library preserves and provides access to a rich, diverse and enduring source of knowledge to inform, inspire and engage you in your intellectual and creative endeavors." These two mission concepts cannot be more dissimilar. While the Copyright Office does function as a repository for copyright information therefore performing a library-like function, it has many more further-reaching responsibilities. So, its Register needs autonomy in order to perform those functions to the capacity expected and that both the creative community and the public deserve.

In order to perform its vital functions of serving both authors and users of creative works as well as providing expert assistance to Congress, special care must be taken to ensure that the Register of Copyrights is an impartial copyright expert. An appropriate model currently exists in our government for the process by which the Register could be named. The Architect of the Capitol is nominated by "a commission consisting of the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House of Representatives, the majority and minority leaders of the Senate, the chairman and ranking minority member of the Committee on House Administration, and the chairman and ranking minority member of the Committee on Rules and Administration." Similarly, a commission could be formed consisting of such parties as Chairman and Ranking Member of both Senate and House Judiciary Committees as well as copyright stakeholders from both the creator and user perspectives in equal number. That commission could then nominate a Register of Copyrights to be confirmed by a majority vote in each House and appointed by the President of the United States for a term of ten years with right of reappointment. The involvement of such a committee would necessarily mitigate the possibility of partisan politics playing a role in the appointment of the Register of Copyrights, a position that should remain non-partisan and equitable to all stakeholders, especially in its role of guiding and advising Congress.

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<sup>&</sup>lt;sup>1</sup> Office, U.S. Copyright. "U.S. Copyright Office." U.S. Copyright Office. N.p., n.d. Web. 05 Jan. 2017.

<sup>&</sup>lt;sup>2</sup> Hayden, Carla. "About the Library | Library of Congress." *The Library of Congress*. Librarian of Congress, n.d. Web. 05 Jan. 2017.

<sup>3 32</sup> Stat. 20; 40 U.S.C. § 162

Similarly, the function of the Copyright Royalty Board is such that it requires impartial expertise. The same commission, with advice and guidance from the Register of Copyrights could also nominate the Copyright Royalty Judges which would then be appointed by the President of the United States. Being involved in these two important appointments, this bi-partisan, equal-interest commission would provide an impartial structure for the basic functions of Copyright Law. That impartiality is a vital component in the copyright digital age.

#### **COPYRIGHT OFFICE ADVISORY COMMITTEES**

NSAI supports the implementation of advisory committees to the Copyright Office. Specific expertise in various nuances of Copyright Law and practical knowledge from stakeholders would prove invaluable to the Register of Copyrights and ultimately Congress. The voice of the creator, whether songwriter, book author, photographer, etc. with interest in the particular committee must be included. We respectfully request that actual creators are statutorily required on every committee where issues would be discussed that would affect their profession/livelihood and ability to create. They provide an insight that no academic, attorney, or even trade group representative can replicate and their perspective is critical when discussing copyright issues. As a representative for songwriters, I do not pretend to be able to fully communicate the personal difficulties that a songwriter faces on a day to day basis in the same way an actual songwriter could--and without the voice of the creator in the room, these committees could not possibly provide fully-informed advice to the Register of Copyrights.

Determining how members of these committees are appointed will be essential. As with both the Register of Copyrights and the Copyright Royalty Judges, ensuring that committees are composed of an equal number of stakeholders from every interest is crucial to making these committees informative as opposed to predisposed and partisan.

# **INFORMATION TECHNOLOGY UPGRADES**

It is no secret that the Copyright Office is in dire need of technology upgrades and the Register should have the autonomy and budget to accomplish that. Time is of the essence as this project is undertaken. The Office cannot currently adequately serve creators or users of copyrighted material. For example, the current digital registration process of a copyright takes 6-10 months to complete.<sup>4</sup> This delay in registration is causing a major problem for songwriters and music publishers because it creates the potential for songs which are in their highest earning potential time period (immediately after release) to be licensed royalty-free. In late summer 2016, the Copyright Office launched a new program by which a user can purchase the entire digital database of the Copyright Office while simultaneously launching a feature allowing the user to send Notices of Intent (NOIs) in mass on a spreadsheet for any song it wished to license and for which it could not find ownership information. The potential for abuses began immediately when users purchased and downloaded the database and cited that purchase as their "reasonable search" for copyright ownership information without doing any additional research, crossreferencing the database furnished by the Copyright Office against their own databases of songs they were using and sending the entirety of the remainder to the Copyright Office in a mass NOI report. The result was that millions of NOIs were sent to the Copyright Office and the titles were licensed royalty-free. Registration with the Copyright Office should not be required for copyright protection, but because of the inefficiency of the Office's digital registration system, even if a copyright owner submitted for registration on a newly-released song, it would

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<sup>&</sup>lt;sup>4</sup> Office, U.S. Copyright. "Registration | U.S. Copyright Office." *Registration | U.S. Copyright Office*. N.p., n.d. Web. 05 Jan. 2017.

not show up in the Office's digital database in a timely manner and would be at risk for being unpaid during its peak earning period.

Better data is necessary and efficiency in cataloguing that data should be a minimal requirement. However, there are concerns for making such a database publicly available. Information is power and power can be abused. There are fears within the creative communities that a public database could create a disadvantage to creators. Much thought and consideration must be given to this concern while hearing from creators themselves.

#### **SMALL CLAIMS**

NSAI has historically supported the formation of a small claims system and believes it is prudent to establish a mutual opt-in system such as the one the Copyright Office has suggested. That mechanism allows for small damages to be pursued without the cost outweighing the economic benefit while also protecting the accused against frivolous claims being made because of the inexpensiveness of doing so. However, there are grave concerns about permitting Section 512 claims in a small claims system. The Copyright Office recommendation caps statutory damages at \$15,000 per work in its small claims system. Under the Copyright Act, permissible statutory damages are up to \$30,000 for non-willful infringement and up to \$150,000 for willful infringement per work. The potential precedent of awarding infringement damages at only \$15,000 per work, reducing the statutory damages for infringement by as much as 90%, is a dangerous precedent that could affect higher court rulings, could impact the deterrent of infringement and devalue the copyright.

#### **ROLE OF THE LIBRARIAN**

In the event that the Copyright Office remains under the purview of the Librarian of Congress, there should be a comprehensive review of the Librarian's current arbitrary unilateral power over the Register of Copyrights. The law states: "all regulations established by the Register under this title are subject to the approval of the Librarian of Congress." Absent total restructuring of the Copyright Office as an independent agency, at the very least its relationship with the Librarian of Congress should be reviewed. To be effective, the Register of Copyrights must at least have more autonomy in his/her decision making and should not be subject to the ability of one individual to unilaterally overrule their decisions. In closing, I would like to thank you both on behalf of all songwriters for your leadership in this important matter. I believe your policy proposal is provides the basis needed to move toward necessary changes.

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<sup>&</sup>lt;sup>5</sup> 17 U.S.C. § 702

### THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

# **ABOUT NSAI**

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit trade association for songwriters. NSAI was founded in 1967 by 42 songwriters including Eddie Miller, Marijohn Wilkin, Kris Kristofferson, Felice and Boudleaux Bryant and Liz and Casey Anderson as an advocacy organization for songwriters and composers. NSAI has around 5,000 members and more than 120 chapters in the United States and ten other countries. The Nashville Songwriters Association International is dedicated to protecting the rights of songwriters in all genres of music and addressing needs unique to the songwriting profession. The organization recently created the first "group" copyright infringement insurance policy for songwriters and formed a partnership for affordable health care for its members.

The association, governed by a Board of Directors composed entirely of professional songwriters, features a number of programs and services designed to provide education and career opportunities for songwriters at every level.

NSAI owns The Bluebird Café, a legendary songwriter performance venue in Nashville, Tennessee. The Music Mill, at 1710 Roy Acuff Place in Nashville, where the careers of Alabama, Reba McEntire, Toby Keith, Shania Twain and Billy Ray Cyrus were launched, serves as headquarters for the Nashville Songwriters Association International.